

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of)	
)	
Section 63.71 Application of Verizon)	
New York and Verizon New Jersey Inc.)	WC Docket No. 13-150
)	
For Authority Pursuant to Section 214)	
of the Communications Act of 1934, As)	Comp. Pol. File No. 1115
Amended, To Discontinue Provision of)	
Service)	

COMMENTS OF PUBLIC KNOWLEDGE

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Executive Summary

The Commission must deny Verizon's application. The record as it stands¹ shows that Verizon's proposal to abandon landline service in Fire Island, Mantoloking, and some neighboring communities will cause users an unreasonable degree of hardship. Verizon's Voice Link wireless technology is no substitute for the telecommunications service it is intended to replace, because it lacks the features, capabilities, and reliability users have come to depend on. In particular, it does not allow users to use medical monitoring devices, fax machines, credit card readers, and similar equipment, and it does not provide broadband access of any kind. The Commission must also deny Verizon's application because Verizon has not given residents adequate notice of its plans, because equivalent services are not available from any other provider, and because the public interest demands it.

The telecommunications system is a worldwide network and if Verizon begins to unravel it the effects will be felt far beyond the shore. Telecommunications service providers have both privileges and responsibilities under the law. Verizon proposes to walk away from the responsibilities while still availing itself of the privileges. The Commission cannot allow this, and must deny the application.

¹ On July 22nd, PK filed a motion with the Commission asking it to remove Verizon's application from streamlined treatment. It should grant this motion. If the Commission takes no action, then Verizon's application will be granted by operation of law on August 27th. This would be before the New York Public Service Commission's comment deadline is reached on September 13th, and before Verizon's report on the quality and reliability of Voice Link is due on November 1st. The Commission's deliberations should take into account the information gathered in this other proceedings. While based on the record as it exists today, the Commission should deny Verizon's application, if the Commission grants PK's motion and provides additional time for the record to be developed, the Commission, PK, and all commenters will have the opportunity to further develop their views.

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Introduction

Superstorm Sandy was unprecedented. It caused billions of dollars in damage, cost many lives, and disrupted many more. In several shore communities in New York and New Jersey, it caused significant damage to the wireline telecommunications infrastructure provided by Verizon. Now, instead of repairing this infrastructure, Verizon has proposed to abandon it, along with the public obligations that go along with providing telecommunications. It wants to offer affected customers a fixed wireless service called Voice Link, a less-capable downgrade from wireline service with no broadband capacity and many missing functions. To do this, it needs the permission of both federal and state policymakers. Thus, the Commission now has before it an application to discontinue telecommunications services that, if granted, would represent the first time the Commission has expressly decided that certain communities should do without adequate telecommunications services.

Particularly given the compressed timeline Verizon insists on,² and given the record as it stands, its application must be denied. The Commission is charged with promoting the public interest, convenience, and necessity, not Verizon's, and notwithstanding its interest in rushing proceedings and presenting its actions as a "done deal," its proposal to walk away from its public obligations and break the social contract of telecommunications must be rejected.

² Verizon New York Inc. and Verizon New Jersey Inc.'s Opposition To Public Knowledge's Motion To Remove Application, WC Docket No. 13-150 (filed July 24, 2013) ("Verizon Opposition").

The residents of Fire Island, Mantoloking, and other shore communities, like all Americans, have a right, enshrined by law and a century of practice, to adequate communications services. Providers of telecommunications services are private enterprises, but they perform a public function. They operate under a social contract where their private privileges are tempered by social obligations. They must provide access to all Americans, not just those wealthy enough to pay premium rates, or those who live in areas that are easy or profitable to serve. They operate physical facilities that are usually uneconomic to replicate, so they must interoperate and interconnect with competitive services. They must respect consumer privacy, and prevent surprises and mysterious charges from appearing on user's bills. They must engineer their networks for reliability and robustness, so that people have quality service that works when it's most needed, and can call emergency services and otherwise rely on the network to promote public safety.³

These various obligations obviously promote the public interest. But it is important to recognize and reiterate at the outset that they are not imposed on private companies arbitrarily. The providers of telecommunications services are granted access to public property and rights of way to lay down the wires and other infrastructure for their service. Their utility cabinets dot the landscape. They run wires along ubiquitous utility poles and, like the providers of other public services like water and natural gas, periodically tear up streets and divert traffic to access and improve their infrastructure. They are part of a standard worldwide

³ Jodie Griffin and Harold Feld, FIVE FUNDAMENTALS FOR THE PHONE NETWORK TRANSITION, July 2013, <http://www.publicknowledge.org/five-fundamentals-phone-network-transition>.

telecommunications system that works as well as it does only due to the coordination of domestic and international public and private officials. These things are necessary but complex, and they are privileges that come with duties. Yet Verizon, a telecommunications company that provides wireline service to millions of Americans, has proposed to walk away from some of those duties, while keeping the privileges. However, despite its bluster, this is not a choice for Verizon to make unilaterally. Federal, local, and state officials, not to mention the public, are the other parties to the telecommunications social contract, and have the ability to hold Verizon to its side of the bargain. Therefore, the FCC must deny Verizon's application to discontinue telecommunications service in areas affected by Sandy.

Last week, Public Knowledge requested that the Commission remove Verizon's application from streamlined treatment. The Commission should grant PK's motion. Unless the Commission takes express action by either removing the application from streamlined treatment, or denying it, it could be approved by operation of law before the Commission has had time to consider the comments in this docket or to conduct any investigations of its own. Its actions could complicate the New York Public Service Commission's attempts to protect New York consumers and investigate the quality and reliability of Voice Link. This would be detrimental to the residents of the affected communities and could be read as a sign that the Commission does not intend to manage this process in a way that protects the residents of the affected communities. If the Commission grants PK's motion, the Commission, PK, and all commenters will benefit from a more developed record. Of

necessity, however, these comments will be confined to the record as it exists today, and the record shows that the Commission must deny Verizon's application.

The Commission notes that it will deny an application if an unreasonable degree of customer hardship would result, if proper notice has not been given, if customers are not able to obtain an equivalent service from another telecommunications provider, or if it would not serve the public interest to grant the application.⁴ The comments will demonstrate how each of those conditions, any one of which would require the Commission to deny the application, are met.

I. An Unreasonable Degree of Customer Hardship Would Result if Verizon Discontinues Its Service

Verizon has proposed to replace its wireline telecommunications service with a less capable wireless product, Voice Link. A nearly-unanimous litany of customer complaints has ensued. Hundreds of residents have formally complained to officials about poor voice quality, loss of international calling services, the loss of the ability to process credits, to send and receive faxes, and much else.⁵ These complaints alone, in their number and specificity, establish a *prima facie* case that Verizon's proposed discontinuance of telecommunications service would cause an unreasonable degree of customer hardship, and that the Commission must deny its application. As these comments and complaints establish, Voice Link is a downgrade from wireline telecommunications.

⁴ Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services, WC Docket No. 13-150 (rel. June 28, 2013) ("Public Notice"), at 4

⁵ The appendices to this filing outline some of the deficiencies of Voice Link as compared with Verizon's wireline service, and select some of the customer complaints from the New York Public Service Commission's docket.

First, as its name implies, Voice Link is a voice-only product. Even in that respect it fails as a substitute for the wireline product it replaces. A wireline customer can use competitive long distance services, can receive collect calls, and can use dial-around services and calling cards. A Voice Link customer cannot. A wireline customer has the right to use any non-harmful network equipment or telephone—a Voice Link customer can only use the equipment Verizon chooses to allow. Many wireline customers have access to a network that provides its own redundant power supply; no wireless customers do. Wireline customers are accustomed to a high quality of service; wireless customers contend with dropped calls and spotty reception. Even with perfect coverage, the data-compression codecs used on mobile devices generally yield poorer voice quality than wireline technologies.

Second, Voice Link provides no access to data services. With wireline connections, customers can use fax machines, credit-card readers, health-monitoring devices, security systems, and much more. Voice Link customers can only make voice phone calls. Contrary to Verizon's assertion, enabling these data services is as much a part of "telecommunications" as voice. Verizon argues that something like an alarm system is not *itself* a telecommunications service⁶—but this is irrelevant. An alarm system or a fax machine or a credit card reader are all uses of telecommunications, not telecommunications themselves. Similarly, when a subscriber calls her mother on mother's day, the greetings and good wishes are not telecommunications either. Telecommunication is a function of the network, the

⁶ Section 63.71 Application of Verizon, WC Docket No. 13-150 (filed Jun. 7, 2013), at 5 ("Verizon Application").

“transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”⁷ It is absurd to claim that the “information of the user’s choosing” must somehow be telecommunications as well.

Verizon is required to support these services that it dismisses just as it is required to support voice calling, because it is subject Part 68 of the FCC’s rules—the “Carterfone” provisions that guarantee a user’s right to attach their own equipment to the network. Its federal⁸ and state tariffs support this as well. For example, in New York, Verizon may only

make changes in its telecommunications services, equipment, operations or procedures, where such action is not inconsistent with Part 68 of the Federal Communications Commission’s Rules and Regulations. If such changes can be reasonably expected to render any Customer’s terminal equipment or communications system incompatible with telecommunications services, or require modification or alteration of such Customer-provided terminal equipment or communications systems, or otherwise materially affect its use or performance, the Customer will be given adequate notice, in writing, to allow the Customer an opportunity to maintain uninterrupted service.⁹

But rather than follow its tariffs and FCC rules, Verizon has provided no means for its customers “to maintain uninterrupted service” and continue their use of health monitors, security systems, and similar devices.

Voice Link also provides no broadband component—leaving wireline DSL customers with nothing at all. Even dial-up Internet access is not compatible with Voice Link. Even if Voice Link is upgraded to offer in-home LTE, the usage restrictions, data caps, and congestion issues that affect Verizon’s wireless services

⁷ 47 USC 153.

⁸ Verizon FCC Tariff 11, 2.1.7 (“subject to F.C.C. Part 68 Regulations”).

⁹ Verizon NY Tariff, PSC NY No. 1, B.1.1.c.(3) (Original Page 16).

generally mean that it can be no substitute for DSL. For example, Fire Island has no cable TV service, making access to online video content all the more necessary. Yet given the usage caps of wireless LTE, such access could be impractical. Of course, this is hypothetical, since Voice Link is not currently capable of LTE or any other form of Internet access. Currently, Verizon says it will “refer” Voice Link customers to Verizon Wireless, a separate product. However, limited Internet access on a single mobile device is no substitute for in-home or business broadband. Broadband is widely acknowledged to be one of today’s most vital communications technologies, yet Voice Link would leave its customers with no way to do online banking, send email, use social networks, access online educational and health information, or any of other countless broadband applications. By leaving people with only the ability to make voice calls, Verizon would set the residents of the affected communities back decades.

Finally, while in some communities (e.g., Mantoloking) a cable VoIP service might be available, it suffers from some of the same infirmities as Voice Link, and in some respects, more. To start with, these VoIP services, like wireless services, typically deny consumers the ability to use competitive dial-around and long-distance services.¹⁰ They may work with data services such as fax machines—but there is no obligation for the provider to provide such functionality, and thus no guarantee that the provider won’t configure its network, as Verizon has, in a way to make these functions inoperable. Vitally, many consumer protections go unenforced for communications services offered via cable or fiber. “Slamming” is

¹⁰ Comcast Digital Voice, http://comcastinfo.com/digital_voice.html (“Separate long distance carrier connections and dial around calling not available.”).

one example. “Slamming” refers to an unauthorized change to a subscriber’s telecommunications service. The Commission has declined to enforce its rules against those providers of fiber and cable VoIP services, rigidly reasoning that once “IP” is involved, consumer protections go out the window.¹¹ More broadly, the Commission’s refusal to properly address the regulatory status of VoIP services¹² calls into question whether it can protect consumers in any number of domains—from the privacy of subscriber information, to “cramming,” to bill shock, to the very ability to place calls to any other phone number.¹³ These protections are part of what it means to subscribe to a “telecommunications” service and if they are not available through some alternative service, then that service is not truly comparable. Subscribers who, through no choice of their own, would lose protections they once enjoyed, and be forced to use a service that is not equivalent

¹¹ Verizon Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, IC No. 09-S0296576, DA 13-1122, Order, (rel. May 17, 2013), http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0517/DA-13-1122A1.pdf.

¹² PK’s position on the proper regulatory status of cable-provided VoIP, and for that matter, wired broadband services, remains unchanged. See, e.g., Comments of Public Knowledge in Favor of Granting the Petition, TW Telecom Inc. Petition For Declaratory Ruling Regarding Direct IP-To-IP Interconnection Pursuant To Section 251(C)(2) of The Communications Act, WC Docket No. 11-119, (filed Aug. 15, 2011) (arguing that interconnected VoIP is a Title II telecommunications service); Comments of Public Knowledge, A National Broadband Plan for Our Future, GN Docket No. 09-51 (filed January 26, 2010) (arguing that broadband is a Title II service). These services should be considered Title II telecommunications services under the Commission’s rules. However, the Commission has not classified them as such or subject them to the same levels of consumer protection, and until it does so, it cannot consider them as substitute “telecommunications” services for the purpose of proceedings of this kind.

¹³ See Harold Feld, *Rural Phone Calls and “Network Neuropathy,”* PUBLIC KNOWLEDGE, April 2, 2013, <http://publicknowledge.org/blog/rural-phone-calls-and-network-neuropathy>.

to what they had before, suffer an undue hardship that requires that the Commission deny Verizon's application.

Those people who subscribe to wireline telecommunications services do so for a reason. If the Commission allows Verizon to take those services away from them, and force them onto a non-comparable wireless or cable wireline service that does not offer them equivalent functionality or protections, it will be doing them a disservice as well as setting a dangerous precedent for the future of telecommunications in the United States.

II. Verizon Has Failed to Give Notice That Voice Link Is Not a "Replacement" for Its Telecommunications Service

There is a serious question as to whether the notice Verizon provided to its customers on June 7th is adequate for timing reasons alone.¹⁴ Sandy hit in late October, Verizon decided not to rebuild some time after that, and began publicly discussing its plans in early March. The CWA reports that Verizon began discussing its plans with workers in November.¹⁵ These many-month delays are difficult to understand. Verizon cannot be said to have given "notice" to residents of plans it had already begun acting on.

Beyond that, the notice's substance is also defective. Verizon does not disclose to its customers Voice Link's shortcomings when compared with the wireline service it replaces. It notes that "some functionalities may change," calling attention to alarm systems and fax machines, but it does not note that, under Voice Link, customers lose the ability to use non-voice equipment of all kinds, and that

¹⁴ Verizon Notice, Exhibit A.

¹⁵ Comments of Communications Workers of America, WC Docket No. 13-150 (filed July 24, 2013), at 5.

even their ability to use the home phone of their choice is subject to Verizon's terms and is no longer a matter of right. It notes that data service will not be available, but confusingly brings up "4G LTE broadband services"—something that is not even part of the Voice Link offering. But looking past that, Verizon fails to point out the various limitations of wireless LTE as compared with wired broadband, such as usage restrictions, caps, and congestion. Nor is it clear from the notice that Verizon wireless LTE will be not able to provide *home* broadband access, usable for PCs, set-top boxes, and the like, but merely access on mobile devices. Neither does Verizon outline the quality and reliability shortcomings of wireless, its power differences, or its possible public safety shortcomings. More broadly, Verizon fails to disclose to the affected communities the possible effects to their local economies—for instance, the inability of businesses to process credit cards with Voice Link, a potentially devastating blow to areas with a strong tourism industry. These deficiencies each provide an independent basis for the Commission to deny Verizon's application.

III. Customers Will Not Be Able to Obtain Equivalent Telecommunications Services From Any Other Provider

As explained above, neither wireless nor VoIP wireline services are equivalent to the telecommunications services Verizon proposes to discontinue. These are the only other communications services available in the affected areas, and they do not offer the same consumer protections, functionality, or reliability as wireline telecommunications. That said, it is not PK's position that only particular technologies can qualify as "telecommunications," as it is of no importance to consumers exactly *how* their telecommunications services are provided, as long as

they have the same features, quality, and protections.¹⁶ However, the Commission's technology-specific rules have created silos where certain protections apply to specific technologies but not others, and where the addition of "IP" works to undo consumer protections and remove competitive choice. This is not ideal, but it is reality, and the Commission must consider the present application under this regulatory backdrop.

Additionally, as it stands, Verizon's Voice Link product is simply not functionally equivalent to wireline telecommunications. It removes features consumers have come to rely on and replaces them with nothing. Verizon has made no effort to ensure that health monitors, security systems, or other data devices will continue to work. It has not explained to consumers how or whether they will be able to continue doing business with competitive telecommunications carriers, use calling cards, or receive collect calls. The obstacles to this are not insuperable engineering or technology difficulties, but Verizon's preferred business plans. Verizon's plans take away avenues for competitive services that have long existed even though there is no fundamental technological reason why they could not work with Voice Link. Indeed, if the *only* difference between Voice Link and wireline communication was the transmission method then it would not be necessary to have this proceeding. However, it would violate the principle of technological

¹⁶ This is why, in addition to conducting its own investigation as to the cost of continuing to provide the service, instead of simply accepting Verizon's submissions without verifying them, the Commission must consider alternate methods that Verizon could employ to continue providing telecommunications, in addition to merely rebuilding the copper network. For instance, deploying newer and more-capable fiber-based equipment may be lower-cost for Verizon, given the economies of scale resulting from its overall equipment spend.

neutrality to lower the standards for telecommunications simply to ensure that particular technologies, as they are deployed today, qualify. Consumers deserve to continue receiving the same, or an upgraded level of service. Voice Link is a downgrade—and given the Commission’s current interpretation of its rules, the same is true for cable communications services, as well.

IV. The Obligation to Provide Telecommunications Services Includes a Duty to Maintain and Repair

Verizon has argued that it has no obligation to provide services when a natural disaster damages them, pointing to language in its tariff that states that its services are “subject to availability.”¹⁷ The question, however, is whether Verizon has an obligation to repair or upgrade facilities that have been damaged—not whether Verizon has an obligation to provide service over damaged facilities. The same tariff shows that it does. The tariff states that “[t]he services provided under this tariff shall be maintained by the Telephone Company,”¹⁸ and that “[t]he installation, use **and restoration** of services shall be in accordance with Part 64, Subpart D, Appendix A, of the Federal Communications Commission’s Rules and Regulations.” Similar provisions are found in its state tariffs, as well.¹⁹ Finally, the FCC’s rules—which, naturally, Verizon is subject to regardless of whether they are explicitly referenced in any tariff—likewise state that “[t]he communications common carrier shall maintain and provision and, **if disrupted, restore** facilities

¹⁷ Verizon Notice at 5, n.2 (citing FCC Tariff No. 11, 2.1.4).

¹⁸ FCC Tariff No. 11, 2.1.16.

¹⁹ FCC Tariff No. 11, 2.1.2 (emphasis added).

and services in accordance with policies and procedures set forth in Appendix A to this part.”²⁰

At a more basic level, Verizon’s commitment to provide a telecommunications service includes a commitment to maintain and repair it. To hold otherwise is disingenuous, and an invitation for telecommunications providers of all kinds, carriers of last resort and otherwise, to avoid their obligations through simple neglect.²¹

V. The Public Interest Requires That the Commission Deny Verizon’s Application

The Commission should deny Verizon’s application because it is not in the interest of the residents of the affected communities. But the implications of what happens in Fire Island, Mantoloking, and other communities extend far beyond the shore. First, the telecommunications system is a single network, encompassing the entire country, and much of the globe. If the network is weakened anywhere, users everywhere are affected. When it becomes harder to communicate with people in communities without adequate telecommunications. Families can’t stay in touch, businesses lose customers, and doctors can’t talk with their patients. After all, the purpose of a community’s telecommunications system isn’t just to allow residents to communicate with each other, but to connect them to the world. Thus, while the Commission states that “[c]omments should include specific information about the

²⁰ 47 CFR 64.401 (emphasis added).

²¹ Sadly, there is evidence that Verizon is doing exactly that, even in areas not affected by Sandy. See Don E. Woods, *Can You Hear Me Now? Verizon Ordered to Improve Service in Western Cumberland County*, May 3, 2013, http://www.nj.com/cumberland/index.ssf/2013/05/board_of_public_utilities_issu.html. By denying Verizon’s application, however, the Commission can start to ensure that subscribers everywhere can continue to enjoy quality service.

impact of this proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service,”²² it should note that there is no “substitute service” that would allow anyone—a resident of the affected communities or otherwise—to communicate with a person that simply has no access to telecommunications. As the comments of Maureen and Samuel J. Mann to the New York Public Service Commission illustrate,²³ when a doctor who is in Fire Island cannot use wireless service to communicate with his patients in the city, more is at stake than the interests of the residents of the shore communities in question. Because the public safety, health, and well-being of people everywhere is at stake, the Commission must deny Verizon’s application.

Finally, if not handled properly, these recent events in a few shore communities could have broad implications for the future of communications and competition policy in the United States. Many of the FCC’s broadband and other policies in recent years have been predicated on the existence of “facilities-based” competition, where the marketplace would presumably discipline telecommunications providers and keep them from taking certain anti-consumer actions. The wholesale abandonment of facilities calls all of this into question. Communities such as Fire Island will be left without wireline-based competition at all, having to make do with wireless services that, as currently deployed, are no substitute for the capabilities of wired telecommunications. Other areas, such as Mantoloking, will have wireline access of any kind only through their monopoly cable provider. It beggars belief that communications policy in the United States

²² Public Notice at 5.

²³ See Appendix B.

should encourage the re-introduction and strengthening of a new communications monopoly—and a relatively unregulated one at that. This is a recipe for high prices, stagnant technology, and discriminatory treatment of both users and edge services.

The Commission’s primary focus in this proceeding should be the interests of the residents of the affected communities. But it must bear in mind that their well-being is connected to that of the whole country, all people who use telecommunications networks, and the broader public interest. While the delay and confusion in Fire Island and Mantoloking should not serve as a precedent for future post-disaster recoveries or FCC proceedings, the “limited issue presented here” is directly relevant to “broader issues,”²⁴ because broader issues inform how the Commission should proceed to protect the interests of the residents of the affected communities and the public interest. Thus, the Commission should deny Verizon’s application, both to stop what could be a first step toward the dissolution of the social contract of telecommunications, and to protect the interests of those who Verizon’s actions most directly affect.

Conclusion

For the above reasons, the Commission should deny Verizon’s application to discontinue telecommunications service.

Respectfully submitted,

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²⁴ Verizon Opposition at 1.